

#### § 133.44

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on the issue of infringement has been reached.

(e) *Alternative procedure: court action.* As an alternative to the administrative procedure described in this section, the copyright owner, whether or not he has recorded his copyright with Customs, may seek a court order enjoining importation of the article. To obtain Customs enforcement of an injunction, the copyright owner shall submit a certified copy of the court order to the Commissioner of Customs, Attention: Office of the Chief Counsel, Washington, DC 20229. In addition, if the copyright in question is not recorded with Customs, the copyright owner shall submit the \$190 fee required by § 133.33(b) and, if the work is a three-dimensional or other work not readily identifiable by title and author, 5 photographic or other likenesses reproduced on paper approximately 8" × 10½" in size.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 93–87, 58 FR 57740, Oct. 27, 1993; T.D. 98–21, 63 FR 12000, Mar. 12, 1998; 63 FR 15088, Mar. 30, 1998]

#### § 133.44 Decision of disputed claim of infringement.

(a) *Claim of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is an infringing copy, the port director shall seize the imported article and institute forfeiture proceedings in accordance with part 162 of this chapter. The bond of the copyright owner shall be returned.

(b) *Denial of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not an infringing copy, the port director shall release all detained merchandise and transmit the copyright owner's bond to the importer.

[T.D. 87–40, 52 FR 9476, Mar. 25, 1987, as amended by T.D. 97–30, 62 FR 19493, Apr. 22, 1997]

#### § 133.45 [Reserved]

#### § 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the director of the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 74–227, 39 FR 32023, Sept. 4, 1974; T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

#### Subpart F—Procedure Following Forfeiture or Assessment of Liquidated Damages

#### § 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24 or § 133.46.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles;